

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5246

Petition of Vermont Electric Cooperative, Inc. (VEC),     )  
for a determination, pursuant to 30 V.S.A. Section       )  
2909, concerning negotiations between VEC and the       )  
Village of Derby Line regarding the amount of plant     )  
and property to be purchased                                     )

Order entered: 12/28/2000

**HEARING OFFICER'S PROPOSAL FOR DECISION**

This docket has a long and difficult history, beginning in April of 1986 and including extended sojourns to the Vermont Supreme Court and United States Bankruptcy Court. In essence, it concerns an attempt by the Village of Derby Line ("Derby Line") to form a municipal electric system under the provision of 30 V.S.A. Chapter 79. Derby Line's plan involved the purchase of the electric distribution facilities located within the Village from the utility providing service, Vermont Electric Cooperative, Inc. ("VEC"). VEC observed that Derby Line ought to be required to also purchase some portion of the generation and transmission system assets in which VEC had invested in order to serve its customers, including those in Derby Line. At least partly because those assets included entitlements to certain nuclear generating stations that would never be built, but for which VEC was obliged to make substantial continuing payments, and because those obligations would accompany any assets transferred, Derby Line took the position that Vermont law required only that it purchase the existing physical plant located within the Village.

Resolution of the issues in this docket through litigation would require the expenditure of considerable time and effort on the part of both parties, and the passage of time (as well as the above-noted bankruptcy proceeding) has changed the economic situation confronting both Derby Line and VEC. Instead, the parties have reached a settlement agreement ("Agreement"), attached hereto as Attachment 1. The Department of Public Service ("Department"), which had been a party from the outset but which had never been called upon to take a firm position on the facts of

the case, has reviewed the Agreement for its impact upon VEC customers, both within and outside Derby Line Village, and has joined in a stipulation (the "Stipulation") that sponsors the Agreement (the Stipulation is attached hereto as Attachment 2). In addition, the Department has joined the other parties in a motion, filed August 17, 2000, that the Board accept the Agreement and dismiss this proceeding.

The Agreement calls for a cash payment by VEC to Derby Line of \$75,000, and a credit to be applied to Derby Line's municipal electric account equal to the normal and customary charges (presently about \$25,000 per year) incurred by Derby Line during each of the next ten years. Some inflation protection is provided to VEC by a levelization after year seven, and Derby Line would pay back any credited amounts if it again attempts to form a municipal electric utility within the ten-year period.

At my request, the parties also submitted a statement clarifying the reasons the Stipulation would benefit the other ratepayers of VEC or the State of Vermont in general. In response, VEC and the Department submitted a letter that explains three tangible benefits to VEC ratepayers outside of Derby Line.

- Derby Line is the most densely populated portion of VEC's service territory and is, therefore, less costly to serve. Since VEC's rates reflect average costs, Derby Line helps to lower the rates charged to other, higher cost areas.
- There are customers near Derby Line but outside the Village who would be extremely isolated from other VEC territory if Derby Line were to become a separate utility. These isolated customers would be expensive for VEC to serve; nor have they been asked if they would wish to be served by a municipal utility in which they would have no vote.
- The issue of severance damages and just compensation have not yet been resolved in this docket, and would require significant time and effort to litigate. Especially with regard to severance damages, which has always been a major issue, the burden of proof would fall very heavily upon VEC.

While not fully exploring them, the parties also raised the intangible benefits of restoring good will and credibility with VEC's members and of avoiding further fragmentation of Vermont's electrical system.

I conclude that the Board should accept the Agreement between Derby Line and VEC, including the special rate granted by the Agreement to Derby Line pursuant to 30 V.S.A. § 229; and that the Board ought to dismiss this proceeding.

The foregoing is reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 18<sup>th</sup> day of December, 2000.

s/John P. Bentley  
John P. Bentley, Esq.  
Hearing Officer

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officer's Proposed Decision is accepted.
2. The Agreement between Derby Line and VEC, attached hereto as Attachment 1, is accepted, and the special rate provided by its terms to the Village of Derby Line is approved.
3. This docket is hereby dismissed.

DATED at Montpelier, Vermont, this 28<sup>th</sup> day of December, 2000.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
	)	

OFFICE OF THE CLERK

FILED: December 28, 2000

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*